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The Politics of International Chemical Weapon Justice: Syria 2011-2017

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Contents

Introduction	3
Conceptualizing international chemical weapon criminal justice	5
Substantive disagreements on international criminal justice	5
Justice as a competing interest.....	6
A partial stalling of the justice agenda(s).....	7
Progress and obstacles toward justice	8
Early allegations of chemical weapon use	8
Syria's troubled membership to the CWC	9
Ongoing issues: Pointing the finger	11
JIM attribution and subsequent developments.....	12
Conclusion.....	15

Introduction

The chemical weapon norm has been repeatedly violated by the parties to the Syrian Civil War. The violation of such an internationally sacrosanct norm would appear to provide a clear impetus for collective action to hold perpetrators to account. Yet, the diplomatic discourse on this matter has increasingly been characterized as particularistic and impotent. In August 2017, Carla Del Ponte, the co-commissioner of the United Nations (UN) Independent International Commission of Inquiry on the Syrian Arab Republic (IICISAR), quit her role in protest; citing the absence of political will, and the futile position that the Commission found itself in relation to war crime prosecution more broadly (Wintour, 2017). In this article, we examine this apparent deadlock, but also consider what progress has been made on the issue of chemical weapon justice specifically in the Syrian case. Progress includes work done through the comparatively well-developed set of international mechanisms in place to deal with chemical weapon war crimes. It also includes systems developed specifically in response to chemical weapon use in Syria as well as war crimes more generally.

It is clear that the apparent deadlock on the issue of chemical weapon justice centers at one level on a situation in which the permanent members of the United Nations Security Council (UNSC) have committed to differing accounts of who is behind chemical weapon use in Syria. Whether this reflects a genuinely held consensus on the issue within intelligence communities and in the higher echelons of governments is beyond the scope of this analysis. It is also clear that selective outrage has been the norm, in the context of a broader bloody and vicious civil war. However, there is a need to take into account more than cynical patronage alone to understand the politics surrounding this issue. Quests for justice have undoubtedly been made subservient to other state interests during the conflict (Bentley, 2014; Mearsheimer, 2014). However, disagreements about chemical weapon issues cannot be simply “explained away” as simply a means by which states have justified pursuit of more immediate interests to domestic and international audiences. Likewise, it is also clear that international disagreements on Syria are embedded in deeper struggles related to the architecture of the international system (Bellamy, 2017). It would also be reductive to understand developments in Syrian chemical weapon justice as simply a “playing out” of these broader struggles. For this reason, we place practices and discourses of international criminal justice at the center of our analysis; contextualizing them in this broader political environment. In this sense, we follow the constructivists in arguing that discourses and

established practices of criminal justice have contributed to interpretation of events and political decision making (See e.g., Price & Reus-Smit, 1998, p. 261; Wendt, 1992, pp. 396–397). Indeed, it is clear that criminal justice *matters* in international politics, (Armstrong, Farrell, & Lambert, 2012; Holsti, 1991; Koh, 1997; Penrose, 2000; Slaughter, Tulumello, & Wood, 1998) even though there is endless disagreement on the questions on how and why it matters and the best routes to achieving it. This is in the sense that conceptions, practices, and institutions of international criminal justice have informed decision making in both national and international forums. In taking this approach, we adopt an open framing of the concept of justice, and highlight areas of agreement, disagreement as well as practical initiatives particularly in areas such as war crime documentation, multilateral attribution processes, and prosecution.

This paper is not designed as an argument for or against a specific position adopted by different actors on this matter. Nor do we seek point to inconsistencies and tensions within the positions we describe. Instead, our article seeks to sketch those positions adopted publicly by states, and the dynamics which have emerged between those positions. Our analysis also makes contributions to ongoing discussions in relation to the future of Syrian justice, and provides insights into the purpose and prospects of chemical weapon evidence gathering and attribution processes.

Our study is presented as a historical case-study and as such points to key contingencies, moments, path-dependencies and re-current patterns of behavior. The paper is structured in two parts. The next section discusses central axioms of this article. Specifically the claims that:

- a) There have been *substantive*, and not just *superficial* disagreements between states on the issue of justice, primarily along *legalist* and *pragmatist* lines;
- b) That international criminal justice initiatives are *tightly intertwined* with other drives and interests of states;
- c) That there has been a *partial* stalling of the international criminal justice agenda in relation to chemical weapons. However progress toward *ensuring some form of accountability on the issue* has still been made through a number of distinct formal international mechanisms and through civil society evidence collection, curation, and archive systems.

This is followed, in the second part of the article, by an analysis of key periods of chemical weapon justice politics. This section serves to contextualize various initiatives directed at evidence gathering, attribution and criminal prosecution. This enables us to further flesh out the implications of our argument in empirical terms. The conclusion of the article reflects on the implications for thinking about more recent developments, including international responses to the Khan Shaykhun attack of April 2017.

Conceptualizing international chemical weapon criminal justice

In this section we discuss the central axioms of our paper. This then allows us to conceptually unpack what we mean when we refer to international chemical weapon justice, in terms of the broader landscape of this issue area, and the type of practical initiatives it includes.

Substantive disagreements on international criminal justice

It is clear that there have been substantive disagreements about the issue of international criminal justice. They have been most apparent in discussions over the prosecution of the Syrian president Assad as a sitting head of state. On the surface level, the debate on Syrian justice maps along pre-existing fault lines concerning transitional justice. On the one hand, there have been advocates who have adopted a more *legalist* position. They emphasize that “there is no peace and no reconciliation without punitive justice” (Clark 2007, 765–66; Parent 2010, 283; Vinjamuri & Snyder 2004, p. 351). Indeed, Del Ponte’s resignation (referred to at the outset of paper) reflects a legalist exasperation. She stated publicly that “[j]ustice must do its work because without justice because there is no real peace we know that from history” (as cited in Wintour, 2017). On the other hand, *pragmatists* have tended to argue that “justice, in its prosecutorial acceptance, could be more pursuable in a later stage of the transitional process, when institutions are stronger” (Vinjamuri & Snyder 2004, p. 346). In the Syrian case, the permanent members of the UNSC also appear to be split along these lines. Western actors have argued that the removal of Assad is crucial for a peaceful resolution of the conflict (Dixon, 2017). Non-Western actors (including Russia and China) have argued that the Syrian president should be at the centre of diplomatic negotiations for an effective truce among the warring parties (Snetkov & Lanteigne, 2015). Justice is, in the short-term, a secondary concern.

In this article, we acknowledge the fact that the concepts of pragmatism and legalism as well as the relationship between them escapes simple characterization, reflecting only

idealized archetypal policy positions (Keller, 2008, pp. 14–15; Leebaw, 2008, p. 95; Sharp, 2015, p. 151). It is also clear that foreign policy decisions are the product of a wide range of tactical and more strategic considerations; and are taken in an evolving domestic and international context. This means that such positions are always to some extent contingent and subject to development over time. In addition, states may to some extent take a range of positions, and emphasize different priorities in different forums. While we acknowledge that the role of justice discourses in this area can certainly not be understood exclusively with reference to these idealized and juxtaposed positions, it is still a useful departure point for understanding how states have engaged with, interpreted and responded to, initiatives in this area. This is in two senses. First it is clear, this dichotomy has been a prominent feature in public diplomacy, which has shaped public understanding and expectations on this issue. There is certainly likely to be more nuanced positions on the issue of justice (and its trade-off with other issues) in the decision making and bargaining which occurs “behind closed doors” within and between states. As an exploratory study however, occurring at a time in which debates are still ongoing, with much occurring away from the public eye, such a framing is still useful, in terms of pointing to future lines of enquiry and prospects for practical progress.

Justice as a competing interest

While we argue that justice debates have mattered, disagreements on the criminal justice have also been tightly bound with developments in other issue domains. Of particular importance have been the evolving dynamics of the internationalized civil war, the Syrian disarmament process, and conflict resolution processes.

In relation to the broader civil war, early Western military support of regime change has evaporated over time due to a number of factors. The first, was the rapid progress made by the Islamic State in Syria and Iraq in 2013-2014. In response, the focus of Western engagement in this conflict shifted to addressing this threat. In addition, the escalation of Russian military involvement in the conflict in September 2015 has involved a large scale air campaign in coordination with the Syrian Government and its regional allies against a wide range, and ever evolving, collection of armed opposition groups. As a recent U.S. Congressional Services Report notes, this has led to a situation in which “Senior members of the Trump Administration have spoken critically of the Syrian president’s leadership but call for de-escalation of the underlying conflict and a negotiated settlement, rather than seeking to compel Syrian president Assad’s departure from power” (Humud, Blanchard, & Nikitin,

2017, p. 2) These shifting military realities on the ground, and shifting diplomatic positions have of course likely had impacts on the politics of international justice. There is consensus in the UNSC on the need for Syrian chemical disarmament. However the relationship between this process and broader conflict resolution and transitional justice processes are contested. In addition, Western powers have tended emphasize their role as coercive powers, where as Russia and Syria have been able to present themselves as partaking in a more consensual process of disarmament (Makdisi & Pison Hindawi, 2017). Despite these tensions, substantial progress has been made, which has seen Syria destroy all its declared stocks including some 1300 metric tonnes of warfare agent and precursor, and the decommissioning of some 27 facilities. This is something which Russia and Syria have continually argued demonstrates Syria's willingness to work openly with the Organization for the Prohibition of Chemical Weapons (OPCW). However, the OPCW Director-General and other states have expressed concern about the completeness and accuracy of the Syria's declaration (Humud, Blanchard, & Nikitin 2017, p. 37). This dynamic has continued to be reflected in ongoing multilateral and unilateral actions in response to allegations of Syrian non-compliance with the Chemical Weapons Convention (CWC) which are further unpacked in the next section.

Finally, ongoing peace processes have been of direct relevance to the issue of international chemical weapon justice (see Lundgren, 2016). It has already been argued that the Syrian Government's central role in the disarmament process strengthened its military position in 2013 (Bentley 2014). On the one hand it is clear that chemical weapons served a symbolic role in broader discussions about the future of the Syrian conflict with the disarmament deal framed initially as a potential point from which to build broader agreement. At the same time however, it is also clear that Western escalation in response to regime use of chemical weapons can also be framed as a spoiler for broader peace processes. In the empirical section below, we flesh out the implications of each of these domains for justice in practical and conceptual terms.

A partial stalling of the justice agenda(s)

The final aspect of our argument is that this situation has resulted in a *partial* stalling of the justice agenda during the period studied. We reveal this through tracing the development of a range of initiatives in a number of forums directed at confirming and attributing chemical weapon use as well as prosecuting those responsible for use. While an internationally led

prosecution of the Syrian government for chemical weapon use is currently a political impossibility, a substantial body of evidence has been built against both state and non-state actors—and a wide range of avenues for action are being explored and pursued. In the analysis below we sign-post key developments in a number of forums. In particular we focus on developments in the UNSC, the Organization for the Prohibition of Chemical Weapons (OPCW), and General Assembly. These are placed in the context of unilateral and national level measures, as well as civil society initiatives.

Progress and obstacles toward justice

Early allegations of chemical weapon use

Concern about the humanitarian and security situation in Syria became significant as the civil war escalated in the spring of 2011. There was division in the UNSC over the best response to the situation, with the United States and several allies favoring a managed regime change and Russia preferring to keep the current regime in place, in part due to fears of state collapse (Allison, 2013). This split was reflected in the failure of three Security Council resolutions in October 2011, February 2012, and July 2012. Around this time, allegations of small-scale chemical weapon use also began to emerge (Robinson, 2013). There were also conflicted reports of an Israeli airstrike against a Syrian chemical weapon installation in January 2013 (Benari, 2013).

The Syrian Government was first to officially request the UN Secretary-General to establish an investigation into an incident at Khan al-Asal, which had taken place on March, 19, 2013. In its request, the Syria Government claimed “terrorist groups” had fired a chemical filled rocket. The day after this initial request, the UN Secretary-General decided to establish the UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic (based on General Assembly Resolution 42/37 C and UNSC Resolution 620 [1988]). This was followed by a flurry of further allegations and counter-allegations against the Syrian Government and opposition groups throughout the summer (UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, 2013). During this period, U.S., British, and French officials made increasingly explicit threats that further chemical weapon use by the Syrian Government would result in increased Western intervention in the Syrian conflict; including the possibility of direct military intervention (Stahn, 2013). During this period there were also bilateral discussions between the United

States and Russia on the prospect of Syrian chemical disarmament. However, while there was an emerging public consensus that Syrian disarmament was desirable, it was apparent that this issue was deeply intertwined with a fundamental disagreement between the United States and Russia on the question of Syrian regime change- and in particular threats by the west to further escalate support for rebel groups (Gearing, 2013; Putin, 2013).

In June 2013, the UN's Independent International Commission of Inquiry on the Syrian Arab Republic found that there were "reasonable grounds to believe that chemical agents have been used as weapons" but stated that "the precise agents, delivery systems or perpetrators could not be identified" (Human Rights Council, 2013, p. 2). In addition, U.S., French, and British officials asserted publicly with varying degrees of confidence that sarin had been employed and that it had been used by the Syrian Government (Erlanger, Cumming-Bruce, & Cowell 2013). That month, the U.S. Government also publicly announced that it was increasing the "scope and scale" of its support for Syrian rebel groups, which was justified with reference to the Syrian Government's alleged use of chemical weapons (Spetalnick & Solomon, 2013).

Inspectors from the UN Secretary General's mission reached Syria on August, 18, 2013, and it was during their visit that the larger Sarin attack occurred in Ghouta (August, 21). In the days following the attack, U.S. president Barack Obama sought to secure international and domestic support to launch strikes against the Syrian Government as early as the weekend of August, 30-31. He requested support from the United Kingdom (UK) prime minister, who failed to secure parliamentary approval. The reasons for the failure of this vote were multifaceted (Kaarbo & Kenealy, 2016), but it is clear that the blurring of the goals of regime change, punishment and deterrence served to undermine the coherence and public legitimacy of the proposal. Following the British vote, Obama decided to seek U.S. Congressional approval. He did not recall congress early however, leaving a window of opportunity for a multilateral agreement on Syrian chemical disarmament. This disarmament process would in turn become a focal point of diplomatic efforts over coming months. It was clear at this point however, that calls for justice would not disappear along with Syria's chemical weapon stocks (see, e.g., UNSC Resolution 2118 (2013)).

Syria's troubled membership to the CWC

Syria's membership to the OPCW has been marred by two concerns. The first is that initial declarations and subsequent amendments to these declarations from the Syrian regime have

been incomplete. The second have been ongoing allegations of use, including the use of both nerve agents and industrial chemicals such as chlorine; which continued throughout the remainder of 2013 and early 2014.

The UN's Independent International Commission of Inquiry on the Syrian Arab Republic claimed it had convincing evidence that government forces carried out chlorine attacks in April 2014 (Human Rights Council, 2014). These claims came in the context of a wide range of allegations that war crimes were being carried out by all sides, which were being documented by the aforementioned organizations as well as other bodies such as the Commission for International Justice and Accountability (CIJA). In May 2014, a French initiative supported by 58 UN member states, which also received widespread civil society support (Civil Society Organizations on Need for Justice, 2014), was vetoed by Russia and China. The U.S. permanent representative, who supported the motion argued that:

[T]he victims of the Assad regimes' industrial killing machine and the victims of terrorist attacks deserve more than to have more dead counted. They deserve to have each of us, the members of this Security Council, counted and held to account. They deserve to have history record those who stood with them, and those who were willing to raise their hands to deny them a chance at justice. While there may be no [International Criminal Court, ICC] accountability today for the horrific crimes being carried out against the Syrian people, there should be accountability for those members of this Council that have prevented accountability, (Power, 2014)

In justifying his veto, the Russian permanent representative suggested that the French proposal was designed to provoke armed intervention in the Syrian conflict and served to divide the permanent members of the UNSC. This was troubling in the context of recent successes over Syrian chemical weapon destruction. He also characterized this act as demonstrating particularism, considering the absence of investigations into allegations against North Atlantic Treaty Organization (NATO), the UK, and the United States in Libya and Iraq. Further to this, both Russia and China pointed to the negative impact that ICC referral could have on the prospect of reaching a political solution to the Syrian conflict (United Nations Press Office, 2014). As was noted in a Russian Ministry of Foreign Affairs (2014) press release:

There is undoubtedly evidence of massive violations of human rights in Syria. They are the consequence of the many years of armed confrontation, as well as the spread

of international terrorism and multiple formations of foreign mercenaries, sponsored from outside. In these conditions, the task of the international community is to achieve a rapid end to the violence and bloodshed in Syria, and a renewal of the political process to search for common denominators in the inter-Syrian dialogue about the future state order of the country. The identification of those, who are guilty of crimes requires an objective and unprejudiced approach and is anticipated to contribute to the promotion of a political settlement and national reconciliation. There are no such items in the French project. On the contrary, it brings elements of confrontation into the activity of the UN Security Council.

In the context of the UNSC deadlock, the Chairman of the Syrian Inquiry, Paulo Sérgio Pinheiro, announced that the panel would cooperate with state-level judiciaries by providing information it had on those suspected of committing war crimes in Syria (Cumming-Bruce, 2015). Further to this, one of the commissioners, Carla Del Ponte, publicly called for the establishment of a special ad hoc tribunal in the absence of progress on the issue of ICC referral. She suggested that this approach might serve to depoliticize the issue, allowing a broader range of perpetrators beyond the Syrian Government to be brought before an international court (Borger, 2015).

Ongoing issues: Pointing the finger

Allegations of the use of chlorine in Syria also motivated further investigations, this time established under the OPCW's own Fact-Finding Mechanism (FFM). The mandate of the FFM extended to confirming chemical weapon incidents, but not to attributing responsibility. These OPCW findings provided the bases of UNSC Resolution 2209 in March 2015, which condemned the use of chlorine gas and stated that the UNSC would take action against those who used such weapons under Article VII of the UN Charter. The Resolution demonstrated the possibility of consensus by the UNSC on chemical weapon issues, even overcoming an attempt by Iran to derail the process (Lynch, 2015). However, tensions within the UNSC in relation to the issue of accountability were still evident in an exchange which took place at this meeting. The United States and France claimed that the recent OPCW FFM reports provided clear evidence that the Syrian government had used chlorine. The UK also noted the need to refer the Syrian case to the ICC (United Nations Press Office, 2015a). In response, Russia challenged this interpretation, arguing that the UNSC could adopt either a professional and expert approach or a media-based approach and rush to blame the Syrian government

while shielding those who might have been really responsible (United Nations Press Office, 2015a).

In this context, both Russia and China asserted the primacy of the OPCW in determining violations of the chemical weapons ban which could lead to action under Article VII of the UN Charter (United Nations Press Office, 2015a). However, there was no capability within the OPCW to confirm culpability. This situation, as well as further evidence of ongoing chemical weapon use in Syria, provided the basis of a further UNSC Resolution (2235 [2015]), which established a joint UN-OPCW investigatory mechanism (JIM) into culpability. The mechanism was initially established with a mandate of one year. It would attempt to attribute those incidents occurring in Syria which were confirmed by the FFM (Leadership Panel of the Organization for the Prohibition of Chemical Weapons and the United Nations Joint Investigate Mechanism, 2016a, p. 10). After this resolution was passed, U.S. permanent representative Samantha Power was quoted as stating that “Pointing the finger matters” (United Nations Press Office 2015b) and would help to prevent future attacks, adding that such a mechanism would help to gather information and to name those responsible. The Russian permanent representative was more cautious, however, noting that the efforts of the mechanism should not add to the further antagonism of the parties to the conflict. He also emphasized the need to address the challenge posed by terrorist use in the Middle-East region (United Nations Press Office 2015b).

JIM attribution and subsequent developments

The JIM Leadership Panel has produced several reports. Its first two reports focused primarily on delineating the scope and methodologies and other practical aspects of the investigation (Leadership Panel of the Organization for the Prohibition of Chemical Weapons and the United Nations Joint Investigate Mechanism, 2016c, p. 5). The JIM panel chose nine cases to initially investigate out of 23 which had already been confirmed with utmost confidence by the FFM (Leadership Panel of the Organization for the Prohibition of Chemical Weapons and the United Nations Joint Investigate Mechanism, 2016a, p. 3). The JIM Leadership Panel’s third report, which was the first to present substantive findings, was published in August 2016. In that report the Panel concluded that it had sufficient evidence to implicate the Islamic State as well as the Syrian Arab Air Force in specific chemical weapon attacks (Leadership Panel of the Organization for the Prohibition of Chemical Weapons and the United Nations Joint Investigate Mechanism, 2016b). The fourth report was published in

October 2016 and identified specific units in the Syrian Air Force (Leadership Panel of the Organization for the Prohibition of Chemical Weapons and the United Nations Joint Investigate Mechanism, 2016c). These findings re-ignited calls for an ICC referral in addition to chemical weapon specific sanctions against the regime from the US and other Western states (See e.g., Irish, 2016). On the other hand, Russia questioned the legitimacy of the JIM process. Russian officials argued publicly that the process focused disproportionately on allegations against the regime, was methodologically flawed, and had been instrumentalized by Western states (Churkin, 2016a, 2016b). In the context of an increasingly fractious OPCW Executive Council, the findings of the third and fourth reports were adopted through vote rather than consensus (the latter had been the historic norm in this forum) (for commentary, Hart, 2017). At this stage, the FFM process, the Syrian Commission of Inquiry, and civil society groups continued to gather and share evidence of chemical weapon use in Syria.

The JIM process also continued to attempt to attribute attacks confirmed by the FFM. The mandate for this mechanism was time limited, and following a long negotiation process, and would eventually be extended for a further year by UNSC Resolution 2319 in November 2016. However, in the context of increasingly vocal criticism of the work of the JIM by Russia following the third and fourth JIM reports, it was already clear that existing or future JIM findings were unlikely to lead to UNSC action. Upon the adoption of the November 2016 Resolution the Russian representative repeated concerns about the politicization of the JIM process and called upon the JIM Leadership Panel “not to bend to what we [Russia] expect will vast amounts of pressure from states, who are guided purely by their own geopolitical interests in the Middle-East.” Further to this Russia noted that it intended “to continue flagging up as far a possible the technical, logistical, legal and procedural aspects of the mechanism’s activities” (Safronkov, 2016).

The following month, the UN General Assembly also took the unprecedented step of establishing a new investigative mechanism (IIIM) ([A/RES/71/248](#)). This move was resisted by Russia and China which argued that such mechanism could only be established through the UNSC vote, or at the request of the member state in question. Despite these reservations, the new initiative was established to serve to collect, consolidate, preserve, and analyze evidence as well as to prepare files to facilitate and expedite criminal proceedings in national, regional or international courts (See e.g., Whiting, 2017; Elliott, 2017).

Meanwhile, the tide of the Syrian war was changing. This was reflected in the breaking of the Aleppo siege by Syrian and Russian forces in October 2016. The following

month, the surprise U.S. election result essentially killed the prospect of further substantial U.S. support to anti-Assad forces. At this point then, it was clear that strategic calculations in Washington, DC were changing. In particular, the announcement by U.S. officials in March that the United States was shifting its focus from regime change to the fight against Islamic State (Nichols, 2017) as well as the general skepticism of the U.S. president Donald Trump of international institutions (Fisher, 2017) suggested a potential shift in how the United States would engage with the chemical weapon justice issue in international forums. In reality, there has been significant continuation of U.S. policies on the issue during the first year of the presidency.

The first major action of the Trump presidency was to submit a draft UNSC resolution with the UK and France (S/2017/172). This resolution would have seen the Council take note of the recent JIM findings. The draft resolution also proposed sanctions against a specified list of individuals involved in chemical warfare (as identified by the JIM) as well as controls on chemical weapon related materials (including chlorine). The draft also called for the establishment of a Committee to designate other individuals, groups, and entities to be subjected to the proposed measures, as well as a panel of experts to gather and analyze information on the implementation of the measures. These sanctions would be in-line with those that the United States, the EU, and other Western states had in place and continued to develop and implement in relation to chemical weapon use by the Syrian Government. The motion was vetoed by Russia and China, with the Russian President quoted as saying that the sanctions would be “totally inappropriate” and “... would only hurt or undermine confidence” in peace talks (as cited in “Syria War,” 2017). Toward the end of March, Russia and China circulated a draft UNSC Resolution which called for the extension of the JIM process to cover allegations of the use of chemical weapons by the Islamic State in Iraq, which was dismissed as unnecessary by the UK permanent representative (“Russia, China Suggest for UNSC,” 2017).

By March of 2017, while fresh allegations of small-scale chemical weapon use and international level investigations continued, it was clear that the use of chemical weapons, problems with the Syrian OPCW declarations, as well as international responses to apparent violations had to a great extent become a routinized aspect of the international politics of the Syrian conflict. It also appeared unlikely that Russia or P-3 states would make concessions in their own official narratives on who had and was continuing to use chemical weapons in

Syria. However, the FFM, JIM, the IICISAR and IIIM, continued to generate and collate evidence of war crimes.

Conclusion

There has been a general recognition of the need for accountability on the issue of chemical weapons, but this has not led to a transcendence of broader political commitments and strategy. Great powers committed as early as 2013 to differing accounts of who was, or was likely to, employ chemical weapons in the Syrian Civil War. In August 2013, it appeared for a while at least as if chemical weapons might also become a means for the United States to shift its strategy in Syria. However, chemical weapons have actually been of limited significance in the second part of the Syrian Civil War (in both physical terms and in terms of grand strategy and diplomacy). Indeed, persistent and credible accusations of ongoing violations by the regime have been of limited direct consequence for the broader war-effort the regime and its main ally Russia (which is already heavily sanctioned by the West). Indeed, the limited nature of the strikes ordered by President Trump in the wake of the Khan Shaykhun attacks in April 2017 has actually served to reassert this.

Some of the major fault lines on this issue are traceable to ideas expressed within the 2012 Geneva Communiqué, the product of early multilateral peace negotiations (see Lundgren, 2016). This document contained within its commitment an inclusive and wide ranging conception of transitional justice. It outlined the need for “Accountability for acts committed during the present conflict must be addressed. There also needs to be a comprehensive package for transitional justice, including compensation or rehabilitation for victims of the present conflict, steps towards national reconciliation and forgiveness.” It is clear, however, that states have prioritized these aspects in different ways in their policies on Syria. Importantly these differences go beyond immediate considerations in the Syrian Civil War, reflecting much more fundamental tensions in the international system between great powers.

These differences have, of course, been observable in the UNSC with the issue of ICC referral central to this debate. These tensions would also be apparent in the Russian and Chinese resistance to the IIIM in the UN General Assembly. In addition, disagreements on this matter can also be traced through developments in the context of the OPCW, and in relation to the JIM. While the United States and allies have treated the FFM and JIM in particular as a *via media* to punitive international justice, both Russia and China have tended

to favor insulating progress in this forum from the UNSC and the damaging effects of allegations on their own visions of Syrian peace. It is clear, that the fallout we saw in response the FFM and JIM reports on the Khan Shaykhun attacks of April 2017 were foregrounded by Russian and Chinese reservations about the political function that JIM report findings might play.

Evidence generated in the context these various investigatory processes may be of relevance to future trials—in Syria, an ad hoc international court, or elsewhere. And indeed, prosecutions of perpetrators of other war crimes committed in Syria have already begun at national level in German courts. However, it is clear that trade-offs in international, regional, and domestic politics over coming years may offer immunity to many of those accused. With this in mind, it is clear that there is a continued need for states not only to support and protect existing process against the type of accusations which have dogged the JIM, but also support independent evidence-gathering and analysis work within broader civil society. This is to help ensure the collation and preservation of evidence (including importantly digital evidence) which may be of use at a future point at which political conditions are more amenable to accountability. This includes attacks which occurred before Syrian membership to the CWC, which have not been investigated under either the FFM or JIM mechanism. This includes notably the major attack which took place on the outskirts of Damascus on August, 21, 2013.

Speaking in relation to the future of international justice more generally, it is apparent that the Syrian conflict has become emblematic of deeper transformations in the global system. We have shown that in relation to justice in fragile states in particular, that the resurgence in pragmatism needs to be taken seriously. This then requires not only the recalibration of our understanding of international level politics in a more strategic sense- but also the role of justice narratives in this changing context.

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